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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,913	02/24/2004	Gian Franco Bernabei	080004-0179	1969
22428	7590	11/18/2005		
FOLEY AND LARDNER LLP			EXAMINER	
SUITE 500			PATEL, JOY	
3000 K STREET NW				ART UNIT
WASHINGTON, DC 20007				PAPER NUMBER
			3766	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/784,913	BERNABEI, GIAN FRANCO
	<b>Examiner</b>	<b>Art Unit</b>
	Joy P. Patel	3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-25 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 24 and 25 is/are allowed.
- 6) Claim(s) 21-23 and 30-33 is/are rejected.
- 7) Claim(s) 34 and 35 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/16/04, 12/29/04, 4/11/05, 5/23/05</u>	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### *Drawings*

The drawings are objected to because:

1. On paragraph 105, element 2130 is mentioned. However, it is not depicted in any of the figures.
2. On paragraph 127 of the specification, element 3230 is discussed as being an element of figure 32A. However, it is not depicted in this figure.
3. On paragraph 40A, element 410 is mentioned. However, this element is not depicted in any of the figures provided.
4. On paragraph 129, element 3210 is mentioned. However, this element is not depicted in any of the figures provided.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining

figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

5. On paragraph 7, line 2, "...may applied..." should be "...may be applied..."
6. On paragraph 108, line 7, "...positive phase positive..." should be changed to "...positive phase..."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al. (US 6,947,791) in view of Zhang et al. (US 2003/0138464)
8. In regard to claims 33, Zhang et al. teaches, "A handheld electrical pulser apparatus...and methods of use for cosmetic treatment of degenerative skin conditions are provided..." (Abstract, lines 11-13). Zhang further discloses, "In another embodiment, the invention method optionally further comprises applying vibration to the skin surface in combination with an electrical impulse to topically introduce a composition into the skin" (Column 9, lines 47-50). However, Zhang (US 6,947791) fails to teach a heating unit on the hand held device. However, Zhang (US 2003/0138464) teaches, "One of the more important aspects of the present invention is the apparatus for generating and providing controlled heating. These controlled heat generating apparatus generally comprise a heat generating portion and a means to pass the heat generated by the heat generating portion to the DDSs, the skin, and/or..." (Paragraph 36, lines 1-6). Zhang further discloses, "Specifically, increased temperature generally can increase the diffusion coefficients of the drugs in the formulations and their permeability across the rate limiting membrane and skin (Paragraph 21, lines 1-4). Zhang goes on to disclose, "The heat generating mechanism may further comprise a microwave generation unit and a mechanism to direct the microwave radiation onto the DDS or the skin" (Paragraph 42, lines 1-3). Since microwaves are a subclass of radio frequency or RF radiation, Zhang also discloses the use

of RF radiation to heat the skin (See also <http://www.fcc.gov/oet/rfsafety/rf-faqs.html> - Q1). Therefore, it would have been obvious to one of ordinary skill in the art to modify the device of Zhang ('791) in view of the teachings of Zhang (US 2003/0138464) in order increase drug absorption into the skin.

### ***Allowable Subject Matter***

9. Claims 24 and 25 are allowed.
10. Claims 34 and 35 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 21-23 and 30-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,743,215 in view of Costantino (US 6,443,914). Claim 8 of US Patent discloses a method for reducing cellulite on the skin by applying dermabrasion, mechanical vibrations, electrical pulses, suction, and a cellulite reducing substance to the skin. Claims 21-23 of the current application discloses a method for reducing cellulite by applying dermabrasion, mechanical vibrations, electrical pulses, and a radio frequency signal to the skin. It further discloses applying suction to the skin, along with a cellulite reducing substance. However, this reference fails to teach the application of heat by way of a lamp or radio frequency signal. Costantino, on the other hand, discloses an apparatus for the treatment of cellulite. Costantino further discloses, "Such connective tissue is generated or strengthened by applying radiation of appropriate frequency to disrupt or otherwise destroy normal cells within or underlying the dermis adjacent to the interface between the dermis and the subcutaneous adipose tissue, or exclusively within the subcutaneous fat or dermis" (Abstract, lines 4-9). Therefore, it would have been obvious to modify the device of Bernabei (6,743,215) to require the application of a radio frequency signal in view of the teachings of Costantino.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy P. Patel whose telephone number is 571-272-5556. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3766



Joy P. Patel  
Patent Examiner  
Art Unit 3766